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Caitlyn Curtin

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HARNESS, DICKEY & PIERCE, P.L.C.

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EXAMINER

GRAVINI, STEPHEN MICHAEL

ART UNIT

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3743

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/733,414	Applicant(s) CURTIN, CAITLYN	
	Examiner Stephen M. Gravini	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claims 1-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

In this application, the first and second movement means are described in the specification to comprise a pivoting mechanism further described by functional language. The pivoting mechanism itself is also construed to be function language because it is not linked to any structure, other than a means for pivoting. The claimed "movement means" does not satisfy a written description requirement because the specification does not describe the claimed invention in sufficient detail that one of ordinary skill in the art can reasonably conclude that the inventor had possession of the claimed invention.

Also, removable or built in remote control followed by functional language to define "control means" does not satisfy a written description requirement because the specification does not describe the claimed invention in sufficient detail that one of ordinary skill in the art can reasonably conclude that the inventor had possession of the claimed invention. The sensors, circuitry or the like does not allow one skilled in the art

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to reasonably conclude that the invention was in possession of the inventor because sensors or circuitry are construed to be a communication means and or the like is not descriptive of any structure.

Furthermore, "securing means" is purely functional because the specification does not define sufficient structure, material, or acts such that the written description requirement is not satisfied because the specification does not describe the claimed invention in sufficient detail that one of ordinary skill in the art can reasonably conclude that the inventor had possession of the claimed invention.

Finally, "muffling means" is given a functional "may comprise a baffling structure" further followed by functional language definition in the specification. Baffling is a functional term construed to mean a flow obstruction and not necessarily any structure, material or acts. In the paper filed February 29, 2008, appellant admits that this language is intended to be exemplary which does not satisfy a written description requirement because the specification does not describe the claimed invention in sufficient detail that one of ordinary skill in the art can reasonably conclude that the inventor had possession of the claimed invention.

Appellant asserts that the claimed means are clearly linked to a dryer to dry a person's body, but as discussed above, those means do not satisfy a written description requirement because the specification does not describe the claimed invention in sufficient detail that one of ordinary skill in the art can reasonably conclude that the inventor had possession of the claimed invention.

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which appellant regard as the invention. Evidence that claims 1-14 fail to correspond in scope with that which appellant regard as the invention can be found in the reply filed February 29, 2008. In that paper, appellant has stated “movement means,” “control means,” “securing means,” and “muffler means” should be construed more narrowly than the *Hyatt* decision. Appellant argues that the figures “clearly shows the means as part of the hair and body dryer,” but that figure does not show hair and body, such that the claims can be reasonably and broadly construed to be interpreted in light of the prior art as rejected below. Similarly the arguments concerning “control means or the like” is construed to be indefinite, because the “or the like recitation” is reasonably and broadly construed to be any type of control means, such as the means disclosed in the prior art discussed below. Likewise, the securing means is not positively specified to be tied to any structure, but rather as optional embodiments (such as a chair, pole, etc. wherein the etc. is indefinite and includes an infinite number of embodiments). Finally, the “muffling/muffler means” uses an “or the like” indefinite recitation in an attempt to clearly define the invention. This recitation is indefinite because it includes an infinite number of embodiments, contrary to appellants arguments. The recited means plus function language will be addressed in light of the prior art as discussed in the rejections below.

Claim Rejections - 35 USC § 102

Claims 1-3, 5-6, 8, and 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones (US 5,822,878). The claimed invention is construed under the

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current practice for claim language falling within 35 USC 112, sixth paragraph, as discussed above in the rejection, stated in a prior answer, but more clearly answered here. As remanded, each of the “means” claim language will be first interpreted before applying the prior art, as required by 35 USC 112, sixth paragraph. The “movement means” is specified at paragraphs [0011] and [0012] as first and second movement means which may comprise a pivoting mechanism or the like. Since the specification recites “may comprise” and “or the like,” it does not clearly link or associate that structure to the function recited in the claim because the specification is indefinite and open ended such that any means of movement would be satisfied to meet the claim language and specification structure. The “control means” is specified at paragraphs [0018] ,[0020], and [0025] as control means which may comprise a removable or built-in remote control, a timer, and sensors or appropriate circuitry, respectively. Again, since the specification recites “may comprise,” it does not clearly link or associate that structure to the function recited in the claim because the specification is indefinite and open ended such that any means of control would be satisfied to meet the claim language and specification structure. However at specification paragraph [0025], the control means contains sensors and appropriate circuitry which will be used to consider limitations with respect to the corresponding structure thereof as required by 35 USC 112, sixth paragraph. The “securing means” is specified at paragraph [0016] as securing means which may comprise a heavy-duty plastic clip or a combination of a receptacle and main pole. Since the specification recites “may comprise,” it does not clearly link or associate that structure to the function recited in the claim because the

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specification is indefinite and open ended such that any means of securing would be satisfied to meet the claim language and specification structure. The “muffler means” is specified at paragraphs [0023] and [0024] as muffling means (later reciting “[t]his muffler means” which may comprise a baffling structure made of a heat tolerant or heat resistant/sensitive material or the like. Since the specification recites “may comprise” and “or the like,” it does not clearly link or associate that structure to the function recited in the claim because the specification is indefinite and open ended such that any means of muffler would be satisfied to meet the claim language and specification structure.

Jones discloses the claimed dryer comprising:

a diffuser 30, 34, or 36 for allowing air to exit or to dry a surface of a user’s body as disclosed in column 4 lines 43-67 of Jones wherein the disclosed “operator,” “he,” “passenger,” or “driver” discloses the claimed intended use “for allowing air to exit and dry a user body surface” since that desired result can be reasonably and broadly construed, in light of the accompanying specification, to be the surface of a user’s body in the disclosed vehicle (and wherein the disclosed nozzle is construed to anticipate the claimed diffuser because both allow air to exit in order to dry a surface of a user’s body as claimed and the claimed user is broadly and reasonably construed in light of the specification to include any being capable of being prevented from touching movement means as specified in paragraph [0014], or may be user held as specified in paragraph [0015], or allow mirror use as specified in paragraph [0015] such that claimed diffuser is capable of performing the intended use of allowing air to dry a user’s body surface);

movement means 46 & 48 for moving the diffuser over a wide range of angles in order to dry different parts of the surface (wherein the disclosed motor 46 whose output shaft is connected via a belt and pulley system 48 is construed to anticipate the claimed movement means because at column 5 line 35 through column 6 line 55, a wide range of drying angles is expressly disclosed, especially at column 6 lines 18-31; furthermore the disclosed motor shaft belt and pulley system performs an identical function as the claimed and specified movement means because both have a pivoting mechanism or the like best shown in figures 2 & 3 of Jones wherein both structures perform the function in substantially the same way, i.e. sweeping a nozzle over a user body, with substantially the same result, i.e. drying a user body); and

control means 52 for sending instructions to the movement means in order to control the movement of the movement means over the wide range of angles (wherein the disclosed screw drive 50 received in a receptacle assembly 52 connected to nozzle 30 via arms 54 and 56 is considered to anticipate the claimed control means because at column 5 lines 47-51, mechanical structure inherently sends instructions to the claimed movement means to control a wide range of drying angles because it is this disclosed linkage that causes movement of one element, i.e. screw drive 50, to "instruct" movement to be "sent" to another element such as a nozzle 30; furthermore the disclosed receptacle assembly with arms and screw drive performs an identical function as the claimed and specified control means because both have a removable or built-in remote control best shown in figure 1 of Jones wherein both structures perform the function in substantially the same way, i.e. remotely controlling the dryer in a timed

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cyclic manner to send instructions to the movement means, with substantially the same result, i.e. drying a user body). The control means has been construed to invoke the sixth paragraph of 35 USC 112 since the means for language is used, which is further modified by functional language, but is not considered to be modified by sufficient structure, material or acts for achieving the specified function (please see the claim construction under the sixth paragraph of 35 USC 112 above). Jones also discloses the claimed securing means 62 because the disclosed trolley which includes rollers 66 along a rail 68 attached via a cable 58 and a pulley 60 interconnected with center nozzle which performs an identical function as the claimed and specified securing means because both have a combination of a receptacle and main pole best shown in figures 5 & 6 of Jones wherein both structures perform the function in substantially the same way, i.e. combining a receptacle and main pole, with substantially the same result, i.e. moving the dryer nozzle up and down, wide range of angles selection (column 6 lines 18-23), preprogrammed movement control means (column 6 lines 1-17), programmable control means 214, a muffler means (column 5 lines 6-9 wherein the disclosed open cell polyurethane foam to reduce noise performs an identical function as the claimed and specified muffler means because both protect nozzles baffling them from heat and moisture wherein both structures perform the function in substantially the same way, i.e., covering the nozzle with substantially the same result, i.e. protecting the nozzle), a timer (column 4 line 47), and wherein the control means is operable to send the instructions to the movement means without the need for a user to access the control means (column 11 lines 54-64).

Claim Rejections - 35 USC § 103

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Aisenberg et al. (US 6,038,786). Jones is considered to disclose the claimed invention, as discussed above under the anticipatory rejection, except for the claimed transceiver for detecting the presence or absence of a user, which is interpreted to be a motion or proximity sensor. Aisenberg, another dryer, is considered to disclose the claimed transceiver at column 7 lines 23-39. It would have been obvious to one skilled in the art to combine the teachings of Jones with the considered disclosed transceiver, disclosed by Aisenberg for the purposed of controlling user drying operations by automating the activation of a drying means by proximity or motion sensing.

Claims 7 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones. Jones is considered to disclose the claimed invention, as discussed above under the anticipatory rejection, except for the claimed lightweight material construction and heat sensitive, resistant, or tolerant material. It would have been an obvious matter of design choice to provide any type of construction material, since the Appellant has not patentably distinguished those types of claimed construction material from those found in the prior art cited in this action, along with the fact that any of the prior art references teach that it would be obvious to provide lightweight material construction and heat sensitive, resistant, or tolerant material.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Bahman (US 5,970,622). Jones is considered to disclose the claimed invention, as discussed above under the anticipatory rejection, except for the claimed removable

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remote control. Bahman, another dryer, is considered to disclose the claimed removable remote control at column 2 lines 23-34. It would have been obvious to one skilled in the art to combine the teachings of Jones with the considered disclosed removable remote control, disclosed by Bahman for the purposed of controlling user drying operations by allowing remote access for control.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Chan (US 5,857,263). Jones is considered to disclose the claimed invention, as discussed above under the anticipatory rejection, except for the claimed retractable power cord. Chan, another dryer, is considered to disclose the claimed retractable power cord at column 2 lines 29-40. It would have been obvious to one skilled in the art to combine the teachings of Jones with the considered disclosed retractable power cord, disclosed by Chan for the purposed of changing the length of the power supply for the drying and allowing dryer use at different locations.

Response to Arguments

Applicant's arguments filed June 8, 2009 have been fully considered but they are not persuasive. Each of the arguments assert patentability without distinguishing the prior art from the claimed invention.

Conclusion

Other prior art references disclose one or more features of the claimed invention, but are not relied upon in rejecting the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Gravini whose telephone number is 571 272

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4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth B. Rinehart can be reached on 571 272 4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen M. Gravini/
Primary Examiner, Art Unit 3743